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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 1H 2007 662

13 ROLANDO MAGDALENO WAGAS
1770 Seth Loop West
14 Upland, California 91784

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs (Board).

22 2. On or about November 7, 2007, the Board received an application for a
23 Respiratory Care Practitioner License from Rolando Magdaleno Wagas (Respondent). On or
24 about October 22, 2007, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 August 5, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code), unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732, subdivision (b) of the Code states:

"The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

" . . . "

8. Section 3752 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license

1 suspended or revoked, or may decline to issue a license, when the time for appeal
2 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
3 order granting probation is made suspending the imposition of sentence,
4 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
5 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
6 setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.”

8 9. Section 3752.6 of the Code states:

9 “For purposes of Division 1.5 (commencing with Section 475), and this
10 chapter [the Respiratory Care Practice Act], a crime involving sexual misconduct
11 or attempted sexual misconduct, whether or not with a patient, shall be considered
12 a crime substantially related to the qualifications, functions, or duties of a
13 respiratory care practitioner.”

14 10. Section 3752.7 of the Code states:

15 “Notwithstanding Section 3750, any proposed decision or decision issued
16 under this chapter [Chapter 8.3, the Respiratory Care Practice Act] in accordance
17 with the procedures set forth in Chapter 5 (commencing with Section 11500) of
18 Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding
19 of fact that the licensee or registrant engaged in any act of sexual contact, as
20 defined in Section 729, with a patient, or has committed an act or been convicted
21 of a sex offense as defined in Section 44010 of the Education Code, shall contain
22 an order of revocation. The revocation shall not be stayed by the administrative
23 law judge. For purposes of this section, the patient shall no longer be considered a
24 patient of the respiratory care practitioner when the order for respiratory procedures
25 is terminated, discontinued, or not renewed by the prescribing physician and
26 surgeon.”

27 11. California Code of Regulations, Title 16, section 1399.370, states:

28 “For the purposes of denial, suspension, or revocation of a license, a crime

1 or act shall be considered to be substantially related to the qualifications, functions
2 or duties of a respiratory care practitioner, if it evidences present or potential
3 unfitness of a licensee to perform the functions authorized by his or her license or
4 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
5 acts shall include but not be limited to those involving the following:

6 “ . . .

7 “(e) Conviction of a crime involving lewd conduct, prostitution or
8 solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal
9 Code.”

10 “ . . . ”

11 COST RECOVERY

12 12. Section 3753.5, subdivision (a) of the Code states:

13 "In any order issued in resolution of a disciplinary proceeding before the
14 board, the board or the administrative law judge may direct any practitioner or
15 applicant found to have committed a violation or violations of law to pay to the
16 board a sum not to exceed the costs of the investigation and prosecution of the
17 case."

18 13. Section 3753.7 of the Code states:

19 "For purposes of the Respiratory Care Practice Act, costs of prosecution
20 shall include attorney general or other prosecuting attorney fees, expert witness
21 fees, and other administrative, filing, and service fees."

22 14. Section 3753.1, subdivision (a) of the Code states:

23 "An administrative disciplinary decision imposing terms of probation may
24 include, among other things, a requirement that the licensee-probationer pay the
25 monetary costs associated with monitoring the probation."

26 FIRST CAUSE FOR DENIAL OF APPLICATION

27 (Conviction of a Crime)

28 15. Respondent's application is subject to denial under Code sections

1 3750, subdivision (d), 3752, and 3752.6, and California Code of Regulations, Title 16,
2 section 1399.370, subdivision (e), in conjunction with Code section 3732, subdivision (b),
3 in that Respondent has been convicted of a crime substantially related to the qualifications,
4 functions and duties of a respiratory care practitioner. The circumstances are as follows:

5 A. On or about February 5, 1992, Los Angeles County Deputy Sheriffs
6 responded to a report of a possible lewd act with a child under fourteen years old.
7 When the victim was interviewed, she told the deputy sheriff that she often stayed
8 at her grandparents house. Respondent, who was her uncle, also lived there. On
9 the evening of January 24, 1992, she was at her grandparents house when
10 Respondent came to the back door and insisted that the victim come out into the
11 back yard. When she went outside, Respondent grabbed her and sexually molested
12 her. She also stated that Respondent had sexually molested her numerous times
13 during the past year. Respondent was arrested for rape by force, and lewd acts with
14 a child under fourteen years old.

15 B. On or about February 10, 1992, in Los Angeles County Municipal
16 Court Complaint No. KA011678, Respondent was charged with committing a
17 forcible lewd act upon a child under the age of fourteen years, in violation of Penal
18 Code section 288, subdivision (b), a felony (Count 1).

19 C. On or about March 26, 1992, the court ordered the complaint
20 amended to add the charge of committing a lewd act upon a child under the age of
21 fourteen years, in violation of Penal Code section 288, subdivision (a), a felony
22 (Count 2).

23 D. On or about March 26, 1992, Respondent was convicted upon his
24 plea of guilty to committing a lewd act upon a child under the age of fourteen years
25 (Count 2). He was placed on probation for five years with various terms and
26 conditions including, serve 240 days in county jail (with credit for 76 days); pay a
27 victim restitution fund fine of \$100.00; not associate with the victim; participate in
28 psychological counseling; pay up to \$1,000.00 for counseling for the victim; and

1 register as a sex offender. Count 1 of the complaint was dismissed.

2 E. In a letter received by the Board on November 7, 2007, Respondent
3 admitted that on January 24, 1992, he committed a lewd act upon his niece.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters
6 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Denying the application of Rolando Magdaleno Wagas for a
8 Respiratory Care Practitioner License;

9 2. Directing Rolando Magdaleno Wagas to pay the Respiratory Care
10 Board the costs of the investigation and enforcement of this case, and if placed on
11 probation, the costs of probation monitoring; and

12 3. Taking such other and further action as deemed necessary and
13 proper.

14 DATED: December 23, 2008

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17 Original signed by Liane Zimmerman for:
18 STEPHANIE NUNEZ
19 Executive Officer
20 Respiratory Care Board of California
21 Department of Consumer Affairs
22 State of California
23 Complainant
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